MATTER OF ARBITRATION

ST. LOUIS COUNTY FIRE FIGHTERS ASSOCIATION, LOCAL NO. 398, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, AFL-CIO,	)	
Petitioner,	)	
vs.	)	Public Case No. 76-007
CITY OF BERKELEY, MISSOURI,	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

JURISDICTIONAL STATEMENT

On January 23, 1976, a Grievance Petition was filed by Local 398, of the International Association of Fire Fighters, alleging a violation of Articles IV, XII and XV of the written agreement between Local 398, International Association of Fire Fighters and the City of Berkeley, Missouri, dated July 1, 1974, to midnight June 30, 1977. Said Grievance was filed pursuant to Ordinance 1892, Article IX of the Municipal Code of the City of Berkeley which sets forth the grievance procedure as follows:

> A grievance is a difference of opinion between an employee, Union or City, regarding the interpretation and/or the application of the terms of this agreement, rules and regulations of the Fire Department or the personnel practices. All grievances must be presented within five days after the occurrence of the grievance or they shall be barred from action as prescribed below.
>
> > Step I - The Union Grievance Committee, upon receiving a written and signed petition, shall determine if a grievance exists. If in their opinion no grievance exists, no further action is necessary.
> >
> > Step II - If a grievance does exist, they shall with or without the physical presence of the aggrieved employee, present the grievance to the Chief of the Fire Department for adjustment.

> Step III - If within five (5) business days the grievance as filed with the Chief in Step II has not been settled, it then shall be submitted to the City Manager.
>
> Step IV - If within five (5) business days the grievance as filed in Step III has not been settled, it then shall be submitted to arbitration for adjustment.
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> Arbitration Board shall consist of a representative of the employer, a representative of the Union and a representative appointed by the Director of State Department of Labor and Industries. A majority shall constitute a quorum. A majority decision shall be final and binding on both parties.

Upon Steps I through III being completed this matter was submitted to arbitration for adjustment. The arbitration panel consisted of one employer member, one employee member, and one neutral member; and said panel acting in compliance with Article IX of Ordinance 1892 of the Municipal Code of the City of Berkeley has jurisdiction in this matter.

FINDINGS OF FACT

On April 8, 1976, a three man arbitration panel convened for the purpose of hearing evidence in reference to a grievance which had been filed by Local 398, International Association of Fire Fighters, hereinafter referred to as the petitioner, on behalf of Damon Covington, against the City of Berkeley, hereinafter referred to as the respondent. All parties were represented by counsel.

The aforementioned grievance was originally submitted by the petitioner on January 23, 1976, and it was agreed to by counsel and made a part of the record that for purpose of the hearing and the grievance shall be as follows:

> The employer discriminated against Damon Covington in that the employer denied him his right to promotion and not be discharged or laid off and no new employee should have been hired, without recalling Damon Covington, who should have been hired as an affirmative action by the City.

On or about December 19, 1975, Damon Covington, hereinafter referred to as Covington, the individual at issue, became employed as a probationary fireman with the

respondent under the provision of the Comprehensive Employment and Training Act, Title III, Public Law 93-203 (1973).

At the time of employment of Covington, it was agreed by the City Manager and the representative of the petitioner that Covington should join the Association.

Covington, hired as a probationary employee under the CETA program, worked for the respondent for approximately three months, ceasing employment on March 30, 1976.

On February 17, 1976, Covington was notified in writing by the respondent that the respondent's allocation under Title VI of CETA was cut by almost 50%. He was further notified that his present position, as a probationary fireman would be eliminated effective March 30, 1976, and should he be successful in the selection process to establish a new eligibility list for permanent employment in the Fire Service he would be transferred to permanent employment status with the respondent.

During the month of January, 1976, Covington sat for the Civil Service Board exam for permanent employment with the respondent upon receiving an unsatisfactory score, he submitted an appeal to the Civil Service Board to secure relief from the written examination requirement.

Upon this appeal the Civil Service Board recommended that Covington be allowed to choose between his January, 1976, Board exam and his monthly evaluation test scores, which were taken as a routine part of his employment with the respondent, for the purpose of satisfying the necessary testing requirement. Based upon his written test scores and interviews, Covington failed to be considered in a permanent employment status by the respondent.

It is alleged by the petitioner that Covington's termination was racially motivated. In questioning of Covington by petitioner's counsel, the record reflects the following:

Ms. Jones: Now, Mr. Covington, do you have any reason to believe that your termination by the City of Berkeley is in any sense racial motivated?

Covington: Well, offhand I would say maybe partially and maybe not, you know, it goes back to the hearings that we had that I could come up with some statements that were made in the hearing that indicated this.

Q What hearing are you talking about?

A The hearing that we had prior to coming before the board before the oral exam, the first hearing we had after we filed the appeal.

Q You're talking about the hearing at which it was decided you could submit equivalency test?

A Right.

Q You had occasion to discuss this then?

A Yes.

Q Could you summarize what that discussion was? What was said at that discussion?

A Well, by the City Manager, Larry Arft, he indicated that we were hungry for jobs; that we needed them.

Q Who are you talking about when you say we?

A I and Howard Logan.

Q Okay, is Mr. Howard Logan a black man?

A Yes, he is.

Q Who to your knowledge is the other, I presume since there are two black men on the fire department, who is the other black man besides Mr. Logan?

A Captain O'Guin.

CONCLUSIONS OF LAW

The Comprehensive Employment and Training Act of 1973, Section 2 states:

It is the purpose of this Act to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons, and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency

> by establishing a flexible and decentralized system of Federal, State, and local programs.

> It is further provided in Title II of Section 201 of this Act that:
> It is the purpose of this title to provide unemployed and underemployed persons with transitional employment in jobs providing needed public services in areas of substantial unemployment and, whenever feasible, related training and manpower services to enable such persons to move into employment or training not supported under this title.

CETA provides for transitional employment and employees are expected to be retained in permanent positions, however, they are not permanent employees merely because they belong to a union or an association. This is set forth in the case of Afro Jobbing and Manufacturing Corporation, 1970 CCH NLRB Section 22,374, 186 NLRB, No. 5 which states:

> Trainees in federally sponsored manpower development program designed to train hard-core unemployed, whose hourly wage rates are subsidized through federal funds, possess a sufficient community of interest to warrant their inclusion in a bargaining unit with other production and maintenance workers of employer. Trainees share same working conditions as other employees and are expected to be retained in permanent positions after completion of their training.

This case indicates that although the employees are expected to be retained in permanent position, they are not considered permanent under the manpower program.

Respondent cites the case of Joseph White, et al. v. The City of Patterson, et al., N. J. Sup. Ct., App. Div. A-883-74 (1975), which we find to be directly on point. The court stated in essence that CETA employees aren't paid by the City, and thus aren't subject to the Civil Service Act and they have none of the protections against dismissal or demotion accorded regular Civil Service employees. Nor do they have the same re-employment rights if federal funds are curtailed.

If an employee, in this case Covington, wants a permanent job with the respondent, he must pass the appropriate civil service test and be appointed in the

usual way. The facts conclusively show that Covington was given ample opportunity to become a permanent employee. This he failed to do.

This panel summarily dismisses the allegation concerning racial discrimination.

DECISION

It is the decision of this panel that any and all relief prayed for in the grievance filed by the petitioner on January 23, 1976, against respondent, City of Berkeley, Missouri, is hereby denied.

Entered this 1st day of July, 1976.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Michael Horn
Michael Horn, Chairman

/s/ David Birenbaum
David Birenbaum, Employer Member

/s/ Stan M. Gladden
DISSENTING Stan Gladden, Employee Member